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**Resolved: A just society ought to presume consent for organ procurement from the deceased.**

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## Affirmative

### Presumed Consent Solves

#### Empirically presumed consent can double organ recovery rate

J. Michael Dennis, Vice President and director of Government and Academic Research for Knowledge Networks, et al, June 30, 1993

"An Evaluation Of The Ethics Of Presumed Consent And A Proposal Based On Required Response," U.S. Department of Health and Human Services, http://optn.transplant.hrsa.gov/resources/bioethics.asp?index=2 (accessed 8/22/2014)

The most celebrated success of these experiences is the case of Belgium, where organ recovery more than doubled following implementation of its policy of "presumed consent." Because of the increase in donation following enactment of these laws in several nations, the hypothesis that recovery without explicit consent contributes to the effectiveness of organ recovery is now widely accepted. Objections to such recovery policies tend to be based on ethical arguments expressive of non-efficiency values, as discussed below.

#### Evidence and empirics are conclusive—presumed consent spurs a massive increase in donations

Sarah Kliff, health policy reporter for the Washington Post, May 1, 2012

"One Surefire Way to Enlist Organ Donors (that doesn't involve Facebook)," Washington Post, http://www.washingtonpost.com/blogs/wonkblog/post/one-surefire-way-to-enlist-organ-donors-that-doesnt-involve-facebook/2012/05/01/gIQA5lb1tT\_blog.html (accessed 8/22/2014)

The impact of a pretty small policy tweak is striking: Organ donation rates are 25 to 30 percent higher in presumed consent countries, according to a 2005 paper in the Journal of Health Economics. When Belgium instituted a presumed consent law in 1985, the number of organ donors nearly doubled within two years. A separate review study, published in the British Medical Journal last year, found similar effects for five countries that passed presumed consent laws in recent decades.

#### You should prefer presumed consent—it’s better to assume people will do the right thing

Veronica English and Ann Sommerville, Department of Medical Ethics, British Medical Association, February 24, 2003

"Presumed consent for transplantation: a dead issue after Alder Hey?" Journal of Medical Ethics, http://jme.bmj.com/content/29/3/147.full (accessed 8/22/2014)

Providing a simple and effective opportunity for people to opt out is crucial to a presumed consent strategy both from an ethical and legal perspective. It is achievable. It also seems somewhat bizarre that society assumes that most citizens are more likely to refuse than to help others, when there is no harm or benefit with either choice for the deceased. Arguably, where we have no evidence of views, “if we are to presume anything, we should presume that people would wish to do the morally right thing in the particular situation. In the case of cadaver organs this is certainly to make them available for life saving or life enhancing use”.

### Presumed Consent Solves

#### Presumed consent would greatly ease U.S. organ shortage

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, http://www.nap.edu/openbook.php?record\_id=11643

Although several of these factors account for much of the international variation in the rates of organ recovery, opt-out legislation “has a positive and sizeable effect on organ donation rates”; and after accounting for other determinations of donation rates, “presumed-consent countries have roughly 25 percent to 30 percent higher donation rates than informed-consent countries” (Abadie and Gay, 2004, p. 15).This level of increase would greatly ease, even though it would not totally eliminate, the organ shortage in the United States (Abadie and Gay, 2004).

#### The backlash argument is weak: Public education solves

Veronica English and Ann Sommerville, Department of Medical Ethics, British Medical Association, February 24, 2003

"Presumed consent for transplantation: a dead issue after Alder Hey?" Journal of Medical Ethics, http://jme.bmj.com/content/29/3/147.full (accessed 8/22/2014)

An understandable concern is that such a change would risk a backlash against donation. This concern alone, however, should not be used as an excuse for failing to consider an option that has already become standard practice in many other countries. Rather, it highlights the importance of stimulating debate and gaining public support before implementing such a change. The government needs to decide what its policy will be on donation and this is the time to initiate change, when extensive legislative reform is already on the cards and public opinion seems positively disposed to transplantation. A neutral approach, focusing solely on regulation would represent a lost opportunity. Politicians should be actively seeking to facilitate and encourage transplantation. The best way to achieve the latter is to move the debate strongly towards wider discussion of presumed consent, highlighting that this is, not only the known wish of the majority of the population but is also, the right thing to do to help those in society who are sick or dying.

#### Austria doubled its donor rate in 8 years when it switched to presumed consent

Sheldon Zink, director of Program for Transplant Policy and Ethics and is a senior fellow at the Center for Bioethics at the University of Pennsylvania, et al, September 2005

"Presumed versus Expressed Consent in the U.S. and Internationally," Virtual Mentor Vol. 7, No. 9, http://virtualmentor.ama-assn.org/2005/09/pfor2-0509.html (accessed 8/22/2014)

Other countries with presumed-consent policies include Austria, France, Columbia, Norway, Italy, and Singapore. In Austria, the rate of donation quadrupled within 8 years of a presumed-consent policy's being introduced. Under Austrian legislation, organs can be recovered irrespective of relatives' objections. Today, the procurement rate in Austria is twice as high as those in the United States and most of Europe, with the number of kidney transplants performed nearly equal to the number of people awaiting donor kidneys.

### Presumed Consent Solves

#### Presumed consent increases donations as much as 25-30%

Rebecca Smith, Telegraph Medical Editor, January 14, 2009

"Presumed consent for organ donation could increase transplants by a quarter," The Telegraph, http://www.telegraph.co.uk/health/healthnews/4239652/Presumed-consent-for-organ-donation-could-increase-transplants-by-a-quarter.html (accessed 8/22/2014)

A team at the Centre for Reviews and Dissemination (CRD) at the University of York focused on 13 studies and most found strong links between presumed consent and increased donation rates. One of the studies found donation rates were 25 per cent to 30 per cent higher with presumed consent.

#### Presumed consent solves organ shortages and is more cost effective than alternatives

Sheldon Zink, director of Program for Transplant Policy and Ethics and senior fellow at the Center for Bioethics at the University of Pennsylvania, et al, September 2005

"Presumed versus Expressed Consent in the U.S. and Internationally," Virtual Mentor Vol. 7, No. 9, http://virtualmentor.ama-assn.org/2005/09/pfor2-0509.html (accessed 8/22/2014)

With 33.5 out of every 1 million residents having organs that are in a condition that allows them to be transplanted after death, Spain has the world's highest rate of actual donation. Spain's presumed-consent law was passed in 1979 and requires the prospective donor to be declared dead on neurological criteria ("brain dead") by 3 physicians. Once death has been declared, any individual who has not formally registered an opposition is considered a potential donor. This system, combined with a societal respect for organ donors, has contributed to Spain's successful organ procurement program . Moreover, the presumed-consent policy in Spain is cost-effective, saving the National Health Service more than 200 000 euros in medical costs for each kidney transplant preformed on a patient on dialysis.

#### In some instances, presumed consent will save medical resources

Hannah Welbourn, School of Medicine, University of Hull, February 14, 2014

"A Principlist Approach to Presumed Consent for Organ Donation," Clinical Ethics, Vol. 9 No. 10,

Allocating more resources to organ donation and transplantation may mean that resources for other areas of healthcare are limited or even reduced. However, it has been reported that in patients with end-stage renal failure, kidney transplantation actually results in overall financial savings because there is no longer a requirement for the more costly haemodialysis sessions.

### Presumed Consent Solves

#### Presumed consent would increase donations as much as 25 percent

Emilia Benton, staffwriter for Nephrology Times, December 2010

"Presumed Consent: More Deceased-Donor Kidney Transplants, but Fewer Living-Donor Transplants," Nephrology Times, http://journals.lww.com/nephrologytimes/Fulltext/2010/12000/Presumed\_Consent\_\_More\_Deceased\_Donor\_Kidney.6.aspx (accessed 8/22/2014)

This study was better conducted than others examining presumed versus explicit consent, noted Alan Leichtman, MD, Professor in the Department of Internal Medicine at the University of Michigan Health System, who was not involved in the study.“It's a more credible comparison. The thing that jumps out at me is in those countries that have presumed consent, the total donation rate is 25 per million population, and in those countries that have explicit consent, it's 20 per million population, and so the overall donation rate is 25 percent higher … in those countries that have presumed consent as opposed to explicit consent.

#### Best evidence supports presumed consent for increasing donations

Alberto Abadie, Professor at Harvard's Kennedy School of Government, and Sebastien Gay, Professor of Economics at University of Chicago, June 2014

"The Impact of Presumed Consent Legislation on Cadaveric Organ Donation: A Cross Country Study," National Bureau of Economic Research Working Paper 10604, http://www.nber.org/papers/w10604.pdf (accessed 8/22/2014)

In this article, we argue that legislative defaults on organ donation may affect the consent decisions of the families, even if they are not enforced. First, we use a simple model to illustrate how presumed consent laws may affect organ donation rates. In addition, using a panel of countries, we show that, once other determinants of organ donation are accounted for, cadaveric donation rates are 25% to 30% higher in presumed consent countries. The magnitude of this estimate does not vary much across the different specifications of our empirical model. Furthermore, using the panel structure of our data we are able to reject the presence of additive fixed effects.

### Organ Sales Are a Bad Idea

#### Sales would increase family conflict and reduce personal stakes in decisionmaking, undermining morality

Jeremy Chapman, director of medicine and cancer at Westmead Hospital in Sydney, Australia, August 22, 2014

"Fix the System, Don’t Swap It for the Free Market," New York Times, http://www.nytimes.com/roomfordebate/2014/08/21/how-much-for-a-kidney/fix-the-system-dont-swap-it-for-the-free-market (accessed 8/23/2014)

Little thought has gone into the consequences of paying people for their organs. Fights in recently bereaved families over the payment for the organs of deceased donors are a reality. Fighting over the money you got for Mum’s organs – what a desolate future. Additionally, when people are paid for something they used to do for free, they actually reduce their involvement. Close family members many not want to think that they consented to “donate” organs for the money and so will refuse to donate at all, for fear of that accusation by the community and extended family.

#### Organ sales are part of the trajectory of neoliberal capitalism and divide the world into sellers and buyers

Nancy Scheper-Hughes, Professor of Anthropology at U.C. Berkeley, Winter-Spring 2002

"The Ends of the Body: Commodity Fetishism and the Global Traffic in Organs," SAIS Review, Vol. 12 No. 1, http://web.mit.edu/writing/2010/June/Scheper-Hughes\_endsofthebody.pdf (accessed 8/22/2014)

Amidst the neoliberal readjustments of the new global economy, there has been a rapid growth of “medical tourism” for transplant surgery and other advanced biomedical and surgical procedures. A grotesque niche market for sold organs, tissues, and other body parts has exacerbated older divisions between North and South, haves and have-nots, organ donors and organ recipients. Indeed, a kind of medical apartheid has also emerged that has separated the world into two populations—organ givers and organ receivers.

#### Regulations wouldn’t check the black market—even legalized selling would incentivize unauthorized selling at more competitive rates and domination by the wealthy would be inevitable

Katrina A. Bramstedt, professor of medical ethics at Bond University School of Medicine in Australia, August 22, 2014

"Buying and Selling Organs Would Create an Economic Class War," New York Times, http://www.nytimes.com/roomfordebate/2014/08/21/how-much-for-a-kidney/buying-and-selling-organs-would-create-an-economic-class-war (accessed 8/23/2014)

Even a regulated system of organ sales will not prevent the inevitable back-door organ auction. And as with any auction, at some point, emotion takes over and truly informed decision-making is impaired (for sellers and buyers). The goal, or in this case the organ, becomes the ultimate prize, and poor and middle-income patients will be priced-out of the market because of to wealthy bidders. Patients consequently survive not due to the altruism of their fellow man — the long-time premise of organ donation — but because of their personal wealth. At the same time, a cohort of humanity is wiped out because they can’t afford the price of life.

### Organ Sales Are a Bad Idea

#### Poor people will be pressured to sell their organs—Iran and Pakistan prove

**Wellcome Connection, 2014**

"The Global Context of Organ Donation," Wellcome Collection, http://www.wellcomecollection.org/whats-on/events/in-or-out/the-global-context.aspx (accessed 8/22/2014)

Iran has gone further still, and allows the sale of organs. Iranian doctors have claimed that, thanks to live organ donation, there are no longer any waiting lists for liver and kidney transplants (though this has been disputed). Critics argue that this policy puts pressure on poor people to donate organs, potentially harming their health. In some Pakistani villages, 40-50 per cent of adult men have only one kidney, having sold the other for use in rich countries.

#### Organ sales entrench biopower and tie people’s identities to the movement of global capital

Chris Ewart, Instructor and writer on disability issues, 2010

"Kidneys to Go: Dis-Ordering the Body in a Pretty Dirty Economy," Queen’s Journal of Visual & Material Culture, Issue 3, http://shiftjournal.org/archives/articles/2010/ewart.pdf (accessed 8/22/2014)

As so-called “donors” or prospectors await the highest bidder, the body becomes inseparable from and consumed by the global economy – a site of commodity extraction, piece by piece, moving from poor to rich where biopower consumes and redistributes itself. While also cautioning that prospective donors may become victims of international organ trafficking, the article’s economic terms say and show nothing of the people (and risks) involved in the disturbingly emergent trade. Whether through unscrupulous organ brokers or unsafe operating procedures, business continues largely unchecked.

#### Capitalism will continue to generate organ sales

Chris Ewart, Instructor and writer on disability issues, 2010

"Kidneys to Go: Dis-Ordering the Body in a Pretty Dirty Economy," Queen’s Journal of Visual & Material Culture, Issue 3, http://shiftjournal.org/archives/articles/2010/ewart.pdf (accessed 8/22/2014)

As the use of bodies to produce, maintain and grow capital has historically created, and continues to create disability around the globe, an ironic lack of capital keeps “two-thirds of the world’s disabled population in poverty.” One’s job or necessity to sell an organ does not always create disability, but these acts are significant when combined with the effects of labour and its products over time and space.

### Presumed Consent Increases Liver Recovery

#### Presumed consent is key to solving liver shortage

Canadian Liver Foundation, June 2010

"Presumed Consent for Organ Donation," Canadian Liver Foundation Position Statement, liver.ca, http://www.liver.ca/support-liver-foundation/advocate/clf-position-statements/organ-donation.aspx (accessed 8/22/2014)

Countries that have presumed consent have high organ donor rates. Even if presumed consent is often over-ridden by family members, its presence will inevitably result in improved organ donation rates. However, unless presumed consent is adopted there will be no improvement in liver transplant waiting list mortality.

#### Liver disease is 12th most common cause of death overall and higher in other groups

Mayo Clinic, November 1, 2010

"Mortality rates from liver diseases underestimated, researchers say," Science Daily, http://www.sciencedaily.com/releases/2010/11/101101115616.htm (accessed 8/22/2014)

Statistics from the Centers for Disease Control and Prevention (CDC) rank mortality related to chronic liver disease and cirrhosis as the 12th most common cause of death in adults in the U.S. Using a modified definition that includes diseases such as viral hepatitis, liver cancer and obesity-related fatty liver disease (liver diseases), Mayo Clinic-led researchers have found that liver-related mortality is as high as fourth for some age groups, and eighth overall.

#### Hep C and other cases requiring liver transplants are expanding

Mayo Clinic, November 1, 2010

"Mortality rates from liver diseases underestimated, researchers say," Science Daily, http://www.sciencedaily.com/releases/2010/11/101101115616.htm (accessed 8/22/2014)

"There are a large number of people with hepatitis C in the U.S. They are getting older and experiencing complications. Also, associated with the 'obesity epidemic,' a large number of individuals have fatty liver disease. Some go on to develop end-stage liver disease, cirrhosis, or liver cancer. In order to discover the true impact of liver disease on the population, we analyzed mortality data using these more comprehensive criteria."

### Presumed Consent is Moral and Just

#### Judging the ethics of presumed consent requires a principlist approach combining utilitarianism with justice

Hannah Welbourn, School of Medicine, University of Hull, February 14, 2014

"A Principlist Approach to Presumed Consent for Organ Donation," Clinical Ethics, Vol. 9 No. 10,

The issue of presumed consent in organ donation lends itself to examination by moral reasoning, whereby specific ethical principles are applied to a given situation in order to arrive at a rational and considered conclusion which is ethically defensible. The four moral principles described by Beauchamp and Childress of respect for autonomy, beneficence, nonmaleficence and justice are considered to be key within healthcare ethics and can be used in the current context to examine the impact of presumed consent on both individuals and on society as a whole; the ethical approach that is based on these four principles is termed ‘principlism’. Autonomy is the right of an individual to decide for themselves what happens to them and what care they receive, without interference from others and with adequate understanding, and is the basis for the practice of informed consent; beneficence is the principle of doing good, which describes a moral obligation to act in a way which will benefit other people, including the prevention and removal of harm, doing good deeds and balancing the likelihood of benefit and harm of a particular decision; nonmaleficence is the principle of doing no harm, whereby one ought not to inflict mental or physical injury on another person either by actions or lack of actions, and justice is the principle of fairness, with equal rights and opportunities for all, within a system which allocates resources equitably.

#### Bodies are not personal property

J. Jeremy Wisnewsi, Professor of Philosophy at Hartwick College, 2008

"When the Dead Do Not Consent: A Defense of Non-Consensual Organ Use," Public Affairs Quarterly, Vol. 22 No. 3, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.jstor.org%2Fstable%2F40441504&ei=8xL8U771PIyBygSw-oHwDA&usg=AFQjCNEz19bBwUZEQRrKJxW6suY-RqcBeQ (accessed 8/22/2014)

But (and this is my second response to the above objection) I think it is a mistake to construe the body as property. Property is such that it can be exchanged—it can be bought, sold, and inspected by its owner. This is not the sort of thing it makes much sense to posit of one’s organs after one has died. Property can be used or not used. It can be bequeathed. This is simply not true in the case of our own bodies. Nor, legally, is it true of parts of our bodies. (Thus, if property is a legal construct, the parts of our body are certainly not pieces of property). Our bodies are not the sorts of objects that we can inspect by, say, putting them in the center of the room and walking around them. They are not the sorts of things that we can exchange in the same way that we might exchange cash for a book. While the use of our bodies might well be sellable (in labor, prostitution, etc), our bodies themselves cannot be so sold. Hence, I contend, bodies cannot be property.

### Presumed Consent is Moral and Just

#### Justice demands we share organs we’re no longer using with those in need

J. Jeremy Wisnewsi, Professor of Philosophy at Hartwick College, 2008

"When the Dead Do Not Consent: A Defense of Non-Consensual Organ Use," Public Affairs Quarterly, Vol. 22 No. 3, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.jstor.org%2Fstable%2F40441504&ei=8xL8U771PIyBygSw-oHwDA&usg=AFQjCNEz19bBwUZEQRrKJxW6suY-RqcBeQ (accessed 8/22/2014)

First, even if we accept that the body is a piece of property, it doesn’t follow that we can do with this property whatever we want. Indeed, even if parts of the body are property, this does not follow. Much of the argument for this claim has been given in the preceding pages. To reiterate: we cannot leave our property in places where said property endangers the lives of others, for example. Likewise, if my above arguments work, there is something quite morally reprehensible in thinking that my right to do specific things with my property trumps another’s more basic right to life. Moreover, as Cecile Fabre has recently argued, even if organs are felicitously considered as among the scarce resources of the world, principles of distributive justice would demand their availability to those in need.

#### Presumed consent preserves justice and autonomy

Hannah Welbourn, School of Medicine, University of Hull, February 14, 2014

"A Principlist Approach to Presumed Consent for Organ Donation," Clinical Ethics, Vol. 9 No. 10,

The shortage of donors means that not all patients who require an organ transplantation have an equal opportunity to receive a donor organ; inevitably, decisions have to be made about the allocation of limited resources, which means that some patients miss out. Any measure that is likely to increase the supply of organs is therefore congruent with the principle of justice, which requires equal opportunities for all. However, it must be ensured that all of those who object to organ donation have the opportunity to register their wishes under a system of presumed consent. Those who do not understand or are not aware of a change to a system of presumed consent, such as individuals who aren’t fluent in the English language, and hard-to-reach groups such as the homeless, may potentially be disadvantaged by this system. This is not an insurmountable problem, and recognising these challenges serves to emphasise the importance of having a clear, easily accessible and widely publicised route for opting out of organ donation.

#### On balance, presumed consent is the most ethically principled approach

Hannah Welbourn, School of Medicine, University of Hull, February 14, 2014

"A Principlist Approach to Presumed Consent for Organ Donation," Clinical Ethics, Vol. 9 No. 10,

By examining the issue of presumed consent more closely and subjecting it to ethical scrutiny by the process of moral reasoning using a principlist approach, it appears there are many advantages and moral arguments in support of the introduction of presumed consent. Despite some concerns that a system of presumed consent would threaten individual autonomy, it has been argued here that as an opt-out system would reflect the wishes of the majority of the population, it is actually more respectful of the principle of autonomy than the current consent system. Individuals who object to organ donation are provided with a means to register their wish not to become a donor, which they currently do not have. Furthermore, by providing the opportunity for life-saving and lifeimproving organ transplantation to many more patients with end-stage organ failure, without causing harm, the system of presumed consent is also consistent with the principles of beneficence, justice and nonmalificence. Thus, presumed consent has been shown to be an ethically beneficial policy when examined by a principlist approach.

### Alternatives Fail

#### Economic incentives fail

Nicola Lacetera, Assistant Professor of Strategic Management in the Department of Management at the University of Toronto, et al, August 2012

"Removing Financial Barriers to Organ and Bone Marrow Donation: The Effect of Leave and Tax Legislation in the U.S.," National Bureau of Economic Research Working Paper 18299, http://www.nber.org/papers/w18299 (accessed 8/22/2014)

In an attempt to alleviate the shortfall in organs and bone marrow available for transplants, many U.S. states passed legislation providing leave to organ and bone marrow donors and/or tax benefits for live and deceased organ and bone marrow donations and to employers of donors. We exploit cross-state variation in the timing and passage of such legislation to analyze its impact on organ donations by living and deceased persons, on measures of the quality of the organs transplanted, and on the number of bone marrow donations. We find that these provisions did not have a significant impact on the quantity of organs donated. The leave legislation, however, did have a positive impact on bone marrow donations. We also find some evidence of a positive impact on the quality of organ transplants, measured by post-transplant survival rates. Our results suggest that these types of legislation work for moderately invasive procedures such as bone marrow donation, but may be too low for organ donation, which is riskier and more burdensome to the donor.

#### No proof mandated choice leads to more donations

Judd B. Kessler, professor of Business and Public Policy, University of Pennsylvania, and Alvin E. Roth, Professor of Economics at Harvard University, August 2011

"Organ Allocation Policy and the Decision to Donate," National Bureau of Economic Research Working Paper 17324, http://www.nber.org/papers/w17324.pdf (accessed 8/22/2014)

A "mandated choice" system would also change the way in which individuals became registered donors (see Thaler and Sunstein 2008 and Thaler 2009). Under mandated choice, every individual who registered for a driver‘s license (or potentially other state or federal documentation) would be required to indicate that he will be an organ donor or that he will not. While there is suggestive evidence that a mandated choice policy would (like opt out) generate more registration of organ donors (Johnson and Goldstein 2003, 2004), similar concerns arise about whether a change to mandated choice would lead to more donated organs and transplants. While the UAGA makes registering to be a donor legally binding under an opt in policy, failing to register as an organ donor is not a legally binding decision, whereas registering as a person who declines to donate could be legally binding on the next of kin. Discussions with the staff at the New England Organ Bank suggests that they are able to recover organs from about half of all non-registered potential donors in New England by approaching next of kin. This means that more than half of the people who are not currently registered under opt in would need to choose yes in mandated choice to increase the recovery rate. Consequently, it remains an empirical question whether a change to mandated choice would generate more organ transplants.

### Xenotransplantation is Undesirable

#### Xenotransplantation risks cross-species infections

M.D. Diikdeniya and A.N. Warrens, Department of Immunology, Imperial College, Hammersmith, March 2003

"Xenotransplantation: Where Are We Today?" Journal of the Royal Society of Medicine, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC539416/ (accessed 8/22/2014)

The risk of transmission of infectious agents across the species barrier is a major anxiety about this whole approach of xenotransplantation. Many such agents can be eliminated from the pig herd through scrupulous husbandry methods. Such methods include the sterilization of both feed and drinking water and the elimination of all mammalian protein from the feed to prevent prion infection. Unfortunately, this does not eliminate the risk of transmitting viruses whose DNA is integrated into the nucleus of transplanted cells, such as porcine endogenous retroI

#### Immune systems can’t handle cross-species transplants

M.D. Diikdeniya and A.N. Warrens, Department of Immunology, Imperial College, Hammersmith, March 2003

"Xenotransplantation: Where Are We Today?" Journal of the Royal Society of Medicine, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC539416/ (accessed 8/22/2014)

Although headway has been made in overcoming the initial hurdle of hyperacute rejection through modulation of the local immune response, we now have to deal with the other aspects of the immune system. Current work is mainly directed towards the production of transgenic and knockout pigs. Alongside this is the exciting possibility of inducing tolerance through mixed haematopoietic chimerism. Anxiety over the risk of infection may be diminished by data confirming the lack of transmission in well-controlled experiments, or by the identification of pig strains incapable of transmitting PERVs. However, there will always be concerns that experiments have failed to exclude transmission of pathogens with a very long lag time and the transmission of pathogens as yet unknown. Xenotransplantation does offer a way to meet the shortfall in organs available for transplantation, though the results may be inferior to those of allotransplantation: the greater immunological incompatibility, with need for stronger immunotherapy, could mean lower life expectancy and shorter graft survival.

### Presumed Consent is Fail Safe

#### Presumed consent can be double-checked by family consultation

Editorial Board of the Guardian, September 12, 2009

"Organ Donation: Why we should move to 'presumed consent,'" The Guardian, http://www.theguardian.com/commentisfree/2009/sep/13/organ-donation-presumed-consent (accessed 8/22/2014)

Under this system, families would still be entitled to prior consultation, and have a right to refuse. There would not – and must never – be any hint of compulsion. The crucial difference would be the inclusion, in a single act, of that substantial majority of people who would be donors, but fail to register. The inertia gap would be closed. That fundamental difference in emphasis is in place in nearly all countries where there are high levels of donation. Britain has one of the lowest rates in Europe. This alone is not accountable for the difference, but there can be little doubt it helps enormously. The move would be controversial for sure.

#### Education and consultation solve ambiguities

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, http://www.nap.edu/openbook.php?record\_id=11643

To be ethically acceptable, a policy of presumed consent would require widespread and vigorous public education to ensure understanding, along with clear, easy, nonburdensome, and reliable ways for individuals to register dissent. In view of the difficulty of interpreting silence, it is not surprising that in most policies of opting out in other countries, organ recovery teams also consult the decedent’s family.

### Organ Shortages Are Significant

#### Shortages increase deaths, destroy quality of life, and increase the costs of medical care

G.M. Abouna, College of Medicine at Drexel University, Jan-Feb. 2008

"Organ Shortage Crisis: Problems and Possible Solutions," Journal of Transplant Procedure, http://www.ncbi.nlm.nih.gov/pubmed/18261540 (accessed 8/22/2014)

In the United States, for example, the number of patients on the waiting list in the year 2006 had risen to over 95,000, while the number of patient deaths was over 6,300. This organ shortage crisis has deprived thousands of patients of a new and better quality of life and has caused a substantial increase in the cost of alternative medical care such as dialysis.

#### Shortages cost lives

Jim Guy, professor emeritus of political science and international law at Cape Breton University, May 6, 2014

"‘Presumed consent’ organ donation model most practical," Cape Breton Post, http://www.capebretonpost.com/Opinion/Columnists/2014-05-06/article-3715076/%26lsquo%3BPresumed-consent%26rsquo%3B-organ-donation-model-most-practical/1 (accessed 8/22/2014)

The reality is that on a yearly basis in Nova Scotia, only about half of those on transplant lists receive organs. Some die. The remainder wait. The waiting stems from a supply problem, and brings an unintentional cruelty — apprehension and fear. Hope for a precious organ is almost always outweighed by the pain of uncertainty. During wait times, medical conditions can progressively worsen and further compromise other organs.

#### 18 deaths per day in the U.S. occur because of organ shortages

U.S. Department of Health and Human Services, 2013

"The Need Is Real: Data," Organdonor.gov, http://www.organdonor.gov/about/data.html (accessed 8/22/2014)

Each day, an average of 79 people receive organ transplants. However, an average of 18 people die each day waiting for transplants that can't take place because of the shortage of donated organs.

#### There’s a worldwide crisis of available organs and death is increasing globally

G.M. Abouna, College of Medicine at Drexel University, Jan-Feb. 2008

"Organ Shortage Crisis: Problems and Possible Solutions," Journal of Transplant Procedure, http://www.ncbi.nlm.nih.gov/pubmed/18261540 (accessed 8/22/2014)

The demand for organ transplantation has rapidly increased all over the world during the past decade due to the increased incidence of vital organ failure, the rising success and greater improvement in posttransplant outcome. However, the unavailability of adequate organs for transplantation to meet the existing demand has resulted in major organ shortage crises. As a result there has been a major increase in the number of patients on transplant waiting lists as well as in the number of patients dying while on the waiting list.

### Answers to Autonomy

#### Presumed consent forces no choice on the individual—no enforceable obligation exists

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, http://www.nap.edu/openbook.php?record\_id=11643

In sum, under presumed-consent laws, while individuals are alive they have dispositional authority over their bodies after their deaths; and within an established and well-understood set of rules and practices, their silence, or their nonrefusal of organ donation, can appropriately be construed as valid consent. In this context, organ recovery teams may legitimately remove decedents’ organs without their prior, express consent. They may also consult the family as a procedural safeguard—for example, the family may be aware of the decedent’s objections—or in recognition of familial interests. Within a presumed-consent framework, the dispositional authority over the organs rests primarily with the individual and only secondarily, if at all, with the family. Neither the individual, while he or she is alive, nor the family, after the individual’s death, has an enforceable obligation to donate organs. These features, along with important differences in social practice, distinguish presumed consent from routine removal.

#### Presumed consent is distinguishable from coercive harvesting of organs

J. Jeremy Wisnewsi, Professor of Philosophy at Hartwick College, 2008

"When the Dead Do Not Consent: A Defense of Non-Consensual Organ Use," Public Affairs Quarterly, Vol. 22 No. 3, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.jstor.org%2Fstable%2F40441504&ei=8xL8U771PIyBygSw-oHwDA&usg=AFQjCNEz19bBwUZEQRrKJxW6suY-RqcBeQ (accessed 8/22/2014)

But it does not follow from this that I endorse the view that innocent persons should be sacrificed in the name of maximizing happiness. The difference between the two cases is plain: Harvesting organs from the living would deprive said person of something the dead (by definition) cannot be deprived of (namely, life). In taking the organs of the deceased, I am not taking his life, or, indeed, anything he is currently using or will ever use again. Because there is no deprivation taking place in the case of the dead, and to fail to transplant the organs of the deceased is simply to waste them, the case of the dead is quite different from the case of the living.

#### Presumed consent doesn’t violate property rights

Maxwell J. Mehlman, Professor of Law and Director, The Law-Medicine Center, Case Western Reserve University School of Law, 1997

"Presumed Consent to Organ Donation: A Reevaluation," Case Western Law Review, http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1541&context=faculty\_publications (accessed 8/23/2014)

Even if organs were accorded the status of constitutionally protected property, a presumed consent system would not necessarily constitute a "taking" under the due process clause of the fifth amendment. Assuming that the body were returned to the family in a condition suitable for burial following removal of organs for transplantation, the family would not be deprived of its right to dispose of the body or of any of its value.

### Answers to Autonomy

#### It’s genuine consent—silent and tacit consent is legitimate

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, http://www.nap.edu/openbook.php?record\_id=11643

Some critics claim that presumed consent is a “fiction” (Erin and Harris, 1999). However, the description of presumed consent given above as tacit, silent consent indicates that it need not always be a fiction. It can sometimes be actual, valid, and effective consent, depending on the nature and structure of social practices, as well as the competence of the individuals whose silence is presumed to be consent, their understanding, and the voluntariness of their choices.

#### Opt-out provisions solve all coercion

Maxwell J. Mehlman, Professor of Law and Director, The Law-Medicine Center, Case Western Reserve University School of Law, 1997

"Presumed Consent to Organ Donation: A Reevaluation," Case Western Law Review, http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1541&context=faculty\_publications (accessed 8/23/2014)

Furthermore, the opting-out system would allow the family to prevent removal of organs (assuming no contrary indication by the decedent), so that the family's failure to exercise its opting-out rights could be deemed to be acquiescence, rather than a taking without permission.

#### Expectation of organ-sharing is compatible with notions of autonomy

J. Jeremy Wisnewsi, Professor of Philosophy at Hartwick College, 2008

"When the Dead Do Not Consent: A Defense of Non-Consensual Organ Use," Public Affairs Quarterly, Vol. 22 No. 3, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.jstor.org%2Fstable%2F40441504&ei=8xL8U771PIyBygSw-oHwDA&usg=AFQjCNEz19bBwUZEQRrKJxW6suY-RqcBeQ (accessed 8/22/2014)

Someone who insisted on being buried with all of her organs might be granted such a right, for instance, only on condition that she contribute organs while living that would rejuvenate during her lifetime. There is need for bone marrow, as well as liver portions, that could be met in this way, thus allowing a person to contribute to the organ shortage while also protecting bodily integrity at death. While I am unsure about the feasibility of this sort of policy, it does demonstrate (along with the other reasons given) that even respect for the autonomy of an agent need not produce exceptions to a general policy of mandatory organ donation.

### Answers to Autonomy

#### Presumed consent meets due process requirements

Maxwell J. Mehlman, Professor of Law and Director, The Law-Medicine Center, Case Western Reserve University School of Law, 1997

"Presumed Consent to Organ Donation: A Reevaluation," Case Western Law Review, http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1541&context=faculty\_publications (accessed 8/23/2014)

Given the limited nature of the private interest in donor organs and the public interest in increasing the supply of transplant organs, an opting-out system that reasonably reduced the risk of an unintended donation would be likely to satisfy the requirements of due process. Under such a system, the family would be deemed to have waived its rights to a "hearing" unless it objected to donation.

#### An opt-out system can be constructed that balances burdens of families and participants

Maxwell J. Mehlman, Professor of Law and Director, The Law-Medicine Center, Case Western Reserve University School of Law, 1997

"Presumed Consent to Organ Donation: A Reevaluation," Case Western Law Review, http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1541&context=faculty\_publications (accessed 8/23/2014)

With adequate research, it is possible that an opting-out system could be constructed that, on the one hand, was not so burdensome for decedents, families or health providers that it unduly discouraged organ retrieval, and on the other hand, satisfied ethical concerns by giving adequate consideration to the participants' wishes and sensibilities.

#### Individualism needs a strong state in order to flourish

Mark S. Weiner, professor of law at Rutgers University, March 10, 2014

"The Paradox of Modern Individualism," Cato Unbound, http://www.cato-unbound.org/2014/03/10/mark-s-weiner/paradox-modern-individualism (accessed 8/22/2014)

In this respect, modern individualism rests on a paradox. For persons to be treated as individuals, and for clans to become clubs, we require the state. If modern individualism is to survive, society needs effective government institutions dedicated to advancing the substantive end of personal autonomy. The state I have in mind need not be centralized (I am personally a strong supporter of federalism in the American context), but it must at all levels be dedicated to vindicating the public interest, defined as policies most citizens would rationally support regardless of their position within society at any given moment.

### Answers to Autonomy

#### Most people want to donate but active consent law presumes most people don’t—presumed consent better reflects the will of the people

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, http://www.nap.edu/openbook.php?record\_id=11643

In effect, so the argument goes, a presumed-consent policy would enable the majority to do what they say they want to do or would be willing to have done with regard to organ donation postmortem. English and Sommerville (2003, p. 150) observe: Given that most people, when asked, express willingness to donate their organs after their death, there are reasonable grounds for presuming that they probably really do wish to donate. The current law, however, presumes they do not. Statistically, it seems that the default position is more likely to be correct if it is based on the individual wishing to donate, unless there are clues to the contrary. Arguably, therefore, unless all the opinion polls are wrong, presumption in favour of donation is more likely to realise the autonomy of the deceased person than a presumption against. In view of the gap between the majority’s expressed preferences, as represented in opinion surveys, and what they actually do, a policy of presumed consent would enable the majority to realize its general will more effectively, with less effort, and hence would increase the number of transplantable organs.

#### Promoting the public interest is vital to individual autonomy

Mark S. Weiner, professor of law at Rutgers University, March 10, 2014

"The Paradox of Modern Individualism," Cato Unbound, http://www.cato-unbound.org/2014/03/10/mark-s-weiner/paradox-modern-individualism (accessed 8/22/2014)

Many conservatives argue as a basic tenet of their political thought that individual liberty thrives when the state is limited and weak. “As government expands, liberty contracts,” explained President Ronald Reagan in his farewell address, calling the principle “as neat and predictable as a law of physics.” This view is especially pronounced among libertarians, and for libertarians of an anarchist perspective, the opposition between the individual and the state is fundamental and irreconcilable. I believe this view is significantly mistaken. From the perspective of comparative law and legal history, it represents a dangerous illusion characteristic of citizens who already enjoy the benefits of modern liberal government. Although the state can be an instrument of tyranny, robust government capable of vindicating the public interest is vital for individual autonomy.

#### States must promote the public interest to maintain adequate legitimacy to protect the individual

Mark S. Weiner, professor of law at Rutgers University, March 10, 2014

"The Paradox of Modern Individualism," Cato Unbound, http://www.cato-unbound.org/2014/03/10/mark-s-weiner/paradox-modern-individualism (accessed 8/22/2014)

Equally, to maintain its legitimacy, government must seek to address the needs that the rule of the clan meets far more directly. It must pursue policies that moderate economic inequality; it must provide a space for the flourishing of voluntary civil society organizations that provide opportunities for solidarity; and it must ensure that individuals have fair opportunities to exercise their autonomy within the marketplace and that they can effectively navigate the host of bureaucratic state institutions that provide the conditions of modern life.

### Shortages Hurt Minorities

#### Minorities account for most people on organ wait lists

Paula Wolfson, staffwriter at WTOP, August 6, 2014

"Minorities the Majority on Kidney Transplant Waiting Lists, WTOP.com, http://www.wtop.com/41/3676390/Minorities-the-majority-on-kidney-transplant-waiting-lists (accessed 8/22/2014)

That campaign has already borne fruit, with the number of minority donors more than doubling in recent years -- from 15 to 31 percent of all donors in the United States. But that is not enough for Callender. "The real issue is that we are disproportionately afflicted with diabetes and hypertension," he says. "Therefore, we have more kidney disease than the majority population." Overall, minorities now account for 57 percent of all people waiting for transplants. But 94 percent of African-Americans and 85 percent of Hispanics on transplant lists need a new kidney.

#### African-Americans are least likely to find viable donors in the status quo

Sacramento Observer, August 19, 2014

"Blacks Suffer Because Shortage of Organ Donors," Sacramento Observer, http://sacobserver.com/2014/08/blacks-suffer-because-shortage-of-organ-donors/ (accessed 8/22/2014)

Blood illnesses such as leukemia and sickle cell anemia can be cured through bone marrow transplants. But African Americans are least likely of all racial groups to find a viable donor, according to the National Marrow Donor Program. The nonprofit runs the world’s largest blood-cell database, known as the Be The Match Registry. The dearth of donors of color affects all transplants, from blood-related procedures, to tissues such as corneas, to organs such as skin and kidneys. In fact more than 37,000 Black patients are awaiting organ transplants today – that’s 30 percent of the national organ transplant waitlist, according to the federal Organ Procurement and Transplant Network (OPTN).

### Answers to Commodification

#### Opponents of presumed consent should really be objecting to the sale of organs

Nancy Scheper-Hughes, Professor of Anthropology at U.C. Berkeley, Winter-Spring 2002

"The Ends of the Body: Commodity Fetishism and the Global Traffic in Organs," SAIS Review, Vol. 12 No. 1, http://web.mit.edu/writing/2010/June/Scheper-Hughes\_endsofthebody.pdf (accessed 8/22/2014)

Opponents of presumed consent laws contest the state’s right to claim dead bodies for organs and tissues harvesting. Yet their limited resistance is unable to forestall the rapid growth of the international organs market as those on both sides of the transplant equation are beginning to accept these still largely covert transactions, protected by transplant medicine’s coyly averted gaze.

#### Commodification of the body is occurring in the status quo

Nancy Scheper-Hughes, Professor of Anthropology at U.C. Berkeley, Winter-Spring 2002

"The Ends of the Body: Commodity Fetishism and the Global Traffic in Organs," SAIS Review, Vol. 12 No. 1, http://web.mit.edu/writing/2010/June/Scheper-Hughes\_endsofthebody.pdf (accessed 8/22/2014)

As commercialization has entered almost every sphere of medicine and biotechnology, those in the North cannot claim any moral high ground. Mortuary practices and tissues harvesting resemble a kind of human strip farming in some parts of the United States. Heart valves, cornea, skin grafts, bone fragments, and Other body parts are used for research, teaching, and experimentation as much as for advanced surgeries. “Excess” cornea are shipped in bulk from the United States to other countries, including developing countries, enabling sellers to reap enormous profits from the handling charges reported as legitimate sales. The sale of human organs and tissues has resulted in certain disadvantaged individuals, populations, and even nations being reduced to the role of “suppliers.” It is a scenario in which bodies are broken, transported, processed, and sold in the interests of amore socially advantaged population of organs and tissues receivers.

## Negative

### Allowing Sale of Organs is Desirable

#### Available empirical evidence suggests allowing sales solves shortages

Gary S. Becker, Nobel Prize-winning professor of economics at the University of Chicago and a senior fellow at the Hoover Institution, and Julio J. Elias, economics professor at the Universidad del CEMA in Argentina, January 18, 2014

"Cash for Kidneys: The Case for a Market for Organs," Wall Street Journal, http://online.wsj.com/news/articles/SB10001424052702304149404579322560004817176?mod=WSJ\_hpp\_MIDDLENexttoWhatsNewsFifth (accessed 8/22/2014)

Few countries have ever allowed the open purchase and sale of organs, but Iran permits the sale of kidneys by living donors. Scattered and incomplete evidence from Iran indicates that the price of kidneys there is about $4,000 and that waiting times to get kidneys have been largely eliminated. Since Iran's per capita income is one-quarter of that of the U.S., this evidence supports our $15,000 estimate. Other countries are also starting to think along these lines: Singapore and Australia have recently introduced limited payments to live donors that compensate mainly for time lost from work.

#### Allowing legal sales stops illegal trade

Abby Wisse Schachter, editor of Capitol Punishment, the New York Post’s politics blog, November 11, 2011

"The Case for Legal Organ Sales," Reason, http://reason.com/archives/2011/11/11/the-case-for-legal-organ-sales (accessed 8/22/2014)

But Professor Nadey Hakim, transplant surgeon at St Mary's Hospital, London, argues that not legalizing sales could be an even bigger problem. "As this trade is going on anyway, why not have a controlled trade where if someone wants to donate a kidney for a particular price that would be acceptable? If it is done safely, the donor will not suffer." And Sir Peter Bell, professor of surgery at the University of Leicester, suggests that “compensatory payments” should be made to relatives who donate the kidney of a family member, as a way of staving off the growing trade in organs from the developing world.

#### Legalization solves all the harms of sales

Anthony Gregory, research editor at the Independent Institute, November 9, 2011

"Why Legalizing Organ Sales Would Help to Save Lives, End Violence," The Atlantic, http://www.theatlantic.com/health/archive/2011/11/why-legalizing-organ-sales-would-help-to-save-lives-end-violence/248114/ (accessed 8/22/2014)

Although not every black market transaction is exploitative -- demonstrating that organ sales, in and of themselves, are not the problem -- the most unsavory parts of the trade can be attributed to the fact that it is illegal. Witnessing the horror stories, many are calling on governments to crack down even more severely. Unfortunately, prohibition drives up black-market profits, turns the market over to organized crime, and isolates those harmed in the trade from the normal routes of recourse.

### Allowing Sale of Organs is Desirable

#### Bringing trade into the open ensures it remains ethical

Anthony Gregory, research editor at the Independent Institute, November 9, 2011

"Why Legalizing Organ Sales Would Help to Save Lives, End Violence," The Atlantic, http://www.theatlantic.com/health/archive/2011/11/why-legalizing-organ-sales-would-help-to-save-lives-end-violence/248114/ (accessed 8/22/2014)

Bringing the market into the open is the best way to ensure the trade's appropriate activity. Since the stakes would be very high, market forces and social pressure would ensure that people are not intimidated or defrauded. In the United States, attitudes are not so casual as to allow gross degeneracy. Enabling a process by which consenting people engage in open transactions would mitigate the exploitation of innocent citizens and underhanded dealing by those seeking to skirt the law.

#### Safeguards solve impulsive or exploitative sales, and legalization solves the organ crisis

Gary S. Becker, Nobel Prize-winning professor of economics at the University of Chicago and a senior fellow at the Hoover Institution, and Julio J. Elias, economics professor at the Universidad del CEMA in Argentina, January 18, 2014

"Cash for Kidneys: The Case for a Market for Organs," Wall Street Journal, http://online.wsj.com/news/articles/SB10001424052702304149404579322560004817176?mod=WSJ\_hpp\_MIDDLENexttoWhatsNewsFifth (accessed 8/22/2014)

Whether paying donors is immoral because it involves the sale of organs is a much more subjective matter, but we question this assertion, given the very serious problems with the present system. Any claim about the supposed immorality of organ sales should be weighed against the morality of preventing thousands of deaths each year and improving the quality of life of those waiting for organs. How can paying for organs to increase their supply be more immoral than the injustice of the present system? Under the type of system we propose, safeguards could be created against impulsive behavior or exploitation.

#### Even if the poor would sell their organs, this would be offset by the benefits to the poor of solving the organ shortage

Gary S. Becker, Nobel Prize-winning professor of economics at the University of Chicago and a senior fellow at the Hoover Institution, and Julio J. Elias, economics professor at the Universidad del CEMA in Argentina, January 18, 2014

"Cash for Kidneys: The Case for a Market for Organs," Wall Street Journal, http://online.wsj.com/news/articles/SB10001424052702304149404579322560004817176?mod=WSJ\_hpp\_MIDDLENexttoWhatsNewsFifth (accessed 8/22/2014)

Though the poor would be more likely to sell their kidneys and other organs, they also suffer more than others from the current scarcity. Today, the rich often don't wait as long as others for organs since some of them go to countries such as India, where they can arrange for transplants in the underground medical sector, and others (such as the late Steve Jobs ) manage to jump the queue by having residence in several states or other means. The sale of organs would make them more available to the poor, and Medicaid could help pay for the added cost of transplant surgery.

### Presumed Consent Hurts Doctor-Patient Relations

#### Presumed consent undermines trust in doctors

Benjamin Wright, staffwriter, June 28, 2011

"Doctors argue against changes on organ donation," The Independent, http://www.independent.co.uk/life-style/health-and-families/health-news/doctors-argue-against-changes-on-organ-donation-2303837.html (accessed 8/22/2014)

Dr Sharon Blackford, a dermatologist from Swansea, is proposing the motion calling for the BMA to change its current position. She said: "I and my colleagues are concerned if we move to presumed consent, it could damage trust in doctors. If someone is in intensive care, families may feel doctors just want to harvest the organs.

#### Trust in doctors is key to success of health care

David H. Thom, Professor of Health and Public Policy at University of California, San Francisco, et al, July 2004

"Measuring Patients’ Trust In Physicians When Assessing Quality Of Care," Health Affairs, http://content.healthaffairs.org/content/23/4/124.long (accessed 8/22/2014)

In addition to its intrinsic value, there is increasing evidence that patient trust is linked to intended or reported patient adherence to treatment recommendations. In a 1999 study by David Thom and colleagues, 62 percent of patients in the highest quartile of trust reported that they always took prescribed medication and followed their doctor’s recommendation, compared with just 14 percent of patients in the lowest trust quartile. Similarly, Dana Safran and colleagues found that patients with higher trust in their physician were significantly more likely to report engaging in eight recommended health behaviors, including exercise, smoking cessation, and safe sexual practices. Trust in the physician was also found to be one of the strongest predictors of patients’ decision to enroll in a study of a new treatment for cancer.

### Organ Donation Requirements Entrench Biopolitical Control

#### Control of others’ body parts is key to control over the biopolitical

Thomas Lemke, professor at Institute for Social Research, 2011

"Biopolitics and beyond. On the reception of a vital Foucauldian notion," biopolitica.cl, http://www.biopolitica.cl/docs/Biopolitics\_and\_beyond.pdf (accessed 8/22/2014)

On the one hand, human material, i.e. bodily parts, transcend the living subject. Even when their “original” bearers are dead, cells, organs, blood, marrow etc. of a human being can exist in the bodies of other human beings, whose “quality of life” they might enhance or whose death they may delay. The life material does not obey the same biological rhythms as the organic body, it can be stored as information, deposited in biobanks or cultivated in stem cell lines, which are in principal immortal (Iacub 2001). As a consequence, death can be exploited, it can be used to optimise and prolong life inside a productive circle: the death of some may guarantee life and survival of others

#### Medical authorities have power over life and death that transcends that of the state

Thomas Lemke, professor at Institute for Social Research, 2011

"Biopolitics and beyond. On the reception of a vital Foucauldian notion," biopolitica.cl, http://www.biopolitica.cl/docs/Biopolitics\_and\_beyond.pdf (accessed 8/22/2014)

The invention of the concept of brain death and the development of techniques of re-animation are followed by the disintegration of death into different bodily regions and time periods. This process allowed for the development and expansion of transplantation medicine. Today, it is less the sovereign state than the medical-administrative authorities that decide over life and death, defining what (human) life is, when it starts and ends. In a completely new sense thanoto-politics is a part of biopolitics.

### Individualism is Desirable

#### Individualism causes us to treat others with justice

Craig Biddle, editor of The Objective Standard and the author of Loving Life, Spring 2012

"Individualism vs. Collectivism: Our Future, Our Choice," The Objective Standard, Vol. 7, No. 1, http://www.theobjectivestandard.com/issues/2012-spring/individualism-collectivism/ (accessed 8/22/2014)

Morality further provides guidance for dealing specifically with people. For instance, it says: Be just—judge people rationally, according to the available and relevant facts, and treat them accordingly, as they deserve to be treated—because this policy is crucial to establishing and maintaining good relationships and to avoiding, ending, or managing bad ones. And morality says: Be independent—think and judge for yourself, don’t turn to others for what to believe or accept—because truth is not correspondence to the views of other people but correspondence to the facts of reality. And so on. By means of such guidance (and the foregoing is just a brief indication), morality enables the individual to live and thrive. And that is precisely the purpose of moral guidance: to help the individual choose and achieve life-serving goals and values, such as an education, a career, recreational activities, friendships, and romance.

#### Individualism doesn’t mean narcissism—individualism can be enlightened and socially engaging

Pierre Lemieux, associate professor in department of Management Sciences at the University of Québec, Spring 1996

"The Individualist Sentiment," Arms, Law & Society , No. 5, http://www.pierrelemieux.org/artjunto.html (accessed 8/22/2014)

I have defined the individualist sentiment as a concern for one's own personal dignity, individual independence and responsibility. One can characterize the individualist sentiment differently, for example by replacing individual independence and responsibility by an egoistic and narcissist concern for one's material comfort and security (related to the idea of "cocooning"). This sentiment, which we may call the "narcissist sentiment" to distinguish it from the individualist sentiment, is antisocial and not necessarily antistatist. It is closely related to the kind of individualism that Tocqueville feared and which, indeed, characterizes our epoch. The narcissist sentiment is to statist individualism what the individualist sentiment is to libertarian individualism. Some authors have claimed that the narcissist sentiment, by elevating individual achievements above collectivist ideals, actually works along with the individualist sentiment towards libertarian individualism. This is far from obvious. The individualist narcissist has no objection to rely on, and be dependent upon, the State for his comfort and security.

### Individualism is Desirable

#### Individualism is metaphysically true

Craig Biddle, editor of The Objective Standard and the author of Loving Life, Spring 2012

"Individualism vs. Collectivism: Our Future, Our Choice," The Objective Standard, Vol. 7, No. 1, http://www.theobjectivestandard.com/issues/2012-spring/individualism-collectivism/ (accessed 8/22/2014)

When we look out at the world and see people, we see separate, distinct individuals. The individuals may be in groups (say, on a soccer team or in a business venture), but the indivisible beings we see are individual people. Each has his own body, his own mind, his own life. Groups, insofar as they exist, are nothing more than individuals who have come together to interact for some purpose. This is an observable fact about the way the world is. It is not a matter of personal opinion or social convention, and it is not rationally debatable. It is a perceptual-level, metaphysically given fact. Things are what they are; human beings are individuals.

#### Individualism doesn’t preclude learning from others; it simply posits the individual as the being of the highest order

Craig Biddle, editor of The Objective Standard and the author of Loving Life, Spring 2012

"Individualism vs. Collectivism: Our Future, Our Choice," The Objective Standard, Vol. 7, No. 1, http://www.theobjectivestandard.com/issues/2012-spring/individualism-collectivism/ (accessed 8/22/2014)

Of course, individuals can learn from other people, they can teach others what they have learned—and they can do so in groups. But in any such transmission of knowledge, the individual’s senses must do the perceiving, and his mind must do the integrating. Groups don’t have sensory apparatuses or minds; only individuals do. This, too, is simply unassailable.

### Individualism is Desirable

#### Reliance on the state to promote the public good leads to addiction to the state

Pierre Lemieux, associate professor in department of Management Sciences at the University of Québec, Spring 1996

"The Individualist Sentiment," Arms, Law & Society , No. 5, http://www.pierrelemieux.org/artjunto.html (accessed 8/22/2014)

Insofar as people's preferences change with experience and habits, State intervention will affect the individualist sentiment: reliance on the State will replace love of individual independence and responsibility, and individual dignity will be viewed as a function of State guarantees. A recursive phenomenon of State growth is generated: the more State you have, the more you want. The State is addictive -- and, we may add, much more dangerously than tobacco, alcohol or heroin.

#### Individualism must oppose state imposition of the good in order to survive

Pierre Lemieux, associate professor in department of Management Sciences at the University of Québec, Spring 1996

"The Individualist Sentiment," Arms, Law & Society , No. 5, http://www.pierrelemieux.org/artjunto.html (accessed 8/22/2014)

I have argued that individual liberty cannot survive without the individualist sentiment being shared by a large number of people. The individualist sentiment is compatible with society -- at least with an open society -- but in strong opposition to the State as we know it. And this sentiment has been declining (at least partly) because individuals have become addicted to the State. If this is true, defending liberty requires rehabilitating the individualist sentiment and breaking State addiction, a tall order indeed -- like saying that a drug addict has to restore his confidence in himself and break his addiction.

### Required Response Solves

#### Required response solves by truly measuring desire to be a donor

J. Michael Dennis, Vice President and director of Government and Academic Research for Knowledge Networks, et al, June 30, 1993

"An Evaluation Of The Ethics Of Presumed Consent And A Proposal Based On Required Response," U.S. Department of Health and Human Services, http://optn.transplant.hrsa.gov/resources/bioethics.asp?index=2 (accessed 8/22/2014)

The policy status quo is a state-centered approach relying on the use of the back of driver's licenses, applications for driver's licenses. or the distribution of donor cards to be carried with or attached to the driver's license. The approach is uncoordinated across the states: Not only is there no centralized collection of donation preferences but not even the same data points are collected (i.e., the variations include consent for removal of specific organs, all organs, and all tissues). A policy of required response would replace wasteful uncoordinated state-level programs with a uniform method of collecting and disseminating donation preferences to procurement organizations. A national approach is needed to assure the routine and uniform collection of donation preference data and its dissemination to organ procurement specialists.

#### Required response best upholds individualism and autonomy

J. Michael Dennis, Vice President and director of Government and Academic Research for Knowledge Networks, et al, June 30, 1993

"An Evaluation Of The Ethics Of Presumed Consent And A Proposal Based On Required Response," U.S. Department of Health and Human Services, http://optn.transplant.hrsa.gov/resources/bioethics.asp?index=2 (accessed 8/22/2014)

The essential ethical advantage of required response is its undiluted loyalty to the value of individual autonomy. By giving every adult an opportunity to opt-out of the donation system, required response respects the individual's "right" to stand apart from society. On this dimension, required response is distinct from presumed consent because the latter offers less protection against the risk of collecting organs from persons who held reservations toward organ donation.

### Incentives Solve

#### Presumed consent will fail, but incentives will solve

Sally Satel, resident scholar at the American Enterprise Institute and editor of When Altruism Isn’t Enough: The Case for Compensating Kidney Donors, August 22, 2014

"Test Incentives for Organ Donations — There’s No Reason Not To," New York Times, http://www.nytimes.com/roomfordebate/2014/08/21/how-much-for-a-kidney/test-incentives-for-organ-donations-theres-no-reason-not-to (accessed 8/23/2014)

Enhancing the rates of deceased donation or instituting “presumed consent” — wherein the organs are taken posthumously unless an individual has specifically forbidden their retrieval — won’t yield enough new organs for transplant. We need more than 100,000 kidneys and the only way to meet this dire need is with living kidney donors. This is what we should do: test incentives. A series of pilot trials should be run to test an arrangement whereby a state or federal government offers interested, healthy donors a benefit for donating a kidney to a stranger. In-kind benefits underwritten by the government would be offered — perhaps a tax credit, a contribution to a retirement plan or to a designated charity, or early access to Medicare. The current algorithm for distributing kidneys would apply.

#### Incentives will greatly increase donations due to the variety of possible rewards

Arthur J. Matas, transplant surgeon and professor of medicine at the University of Minnesota, August 22, 2014

"Protecting Donors and Patients," New York Times, http://www.nytimes.com/roomfordebate/2014/08/21/how-much-for-a-kidney/protecting-donors-and-patients (accessed 8/24/2014)

A government-regulated system of incentives for living donors would ease the financial burdens that they now unfairly suffer. A well-run system could increase donation rates — saving the lives of transplant candidates, shortening their waiting time, and reducing the likelihood that they would turn in desperation to underground markets. The incentives for living donors could consist of reimbursement of all their costs (including lost wages), health insurance and perhaps a specific benefit of their own choosing (a tax break, college tuition, job training).

### Presumed Consent is Bad: Over-Eager Doctors

#### Presumed consent will lead to physicians hastily declaring patients dead

Mike Judge, Head of Communications, the Christian Institute, March7, 2013

"The Government Just Nationalized Your Body," Huffington Post, http://www.huffingtonpost.co.uk/mike-judge/presumed-consent-organ-do\_b\_3539354.html (accessed 8/22/2014)

Aside from the principles of individual liberty, I have a much more practical concern. It is this: organs are being harvested from patients who are not dead yet. Let me explain. To ensure the best chance of a successful organ transplant, it is important that organs are harvested while they're fresh. Doctors are keen to take organs from a body with a beating heart because the removal of the heart, lungs, liver, pancreas and kidneys must be done before they begin to deteriorate due to the cessation of blood circulation. In Britain two doctors must agree that a patient is 'brain dead', though their heart continues to beat, before organs can be removed. Some 'brain dead' organ donors are given a general anaesthetic before their organs are removed to suppress the body reacting to the physical distress of being cut into. Ever heard of a dead body being given anaesthetic?

#### Death is not always obvious—organ harvesting could begin too soon

Jacquelyn Shaw, health law researcher and a former Canadian Institutes of Health Research training fellow in health law ethics and policy, May 23, 2014

"Presumed Consent is Highly Presumptuous," Chronicle Herald, http://thechronicleherald.ca/opinion/1209594-organ-donation-presumed-consent-highly-presumptuous (accessed 8/22/2014)

A relevant second issue is that death is not always a simple diagnosis. In 2003, a government body, mandated to increase organ supplies and staffed with transplant experts, created major changes in Canadian brain-death determination. Through voluntary medical guidelines, it changed the definition of brain death from “whole-brain death” (used since 1968) to the easier-to-meet U.K. “brainstem death” standard. Other serious safety problems surfaced with these guidelines, appearing to risk brain-death misdiagnosis, possibly borne out in an Alberta baby’s misdiagnosis in 2009. Because life support or organs may be removed after death declaration, misdiagnosis detection is difficult. The guidelines were adopted sporadically throughout Canada, including in all of the major Maritime transplant hospitals, but not everywhere.

#### Empirically doctors are eager to harvest organs and declare people dead

Mike Judge, Head of Communications, the Christian Institute, March7, 2013

"The Government Just Nationalized Your Body," Huffington Post, http://www.huffingtonpost.co.uk/mike-judge/presumed-consent-organ-do\_b\_3539354.html (accessed 8/22/2014)

Secular ethicist Professor Peter Singer of Princeton University has said of these patients: "Defining such people as dead was a convenient way around the problems of making their organs available for transplantation, and withdrawing treatment from them." Medical ethicist, Michael Potts, has said: "Since the patient is not truly dead until his or her organs are removed, it is the process of organ donation itself that causes the donor's death." There have been several cases of patients reviving just as the surgeon is about to plunge in with a scalpel to harvest organs.

### Routine Removal Solves and is not Presumed Consent

#### The state need not acquire approval to remove dead people’s organs for public good

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, http://www.nap.edu/openbook.php?record\_id=11643

Routine removal presupposes that the state or society has a right of access to the organs of deceased individuals. This right may rest on the state’s or the society’s claimed ownership of or authority over the bodies of deceased individuals, or it may rest on an enforceable duty of individuals and families to provide postmortem organs as needed. The fundamental distinction between policies of routine removal and policies of presumed consent rests on their different interpretations of the relation of the individual and his or her dead body to the state or society.

#### Autopsies prove the government already has jurisdiction over dead bodies

Scott Carney, investigative journalist based in Chennai, India, May 8, 2007

"The Case for Mandatory Organ Donation," Wired.com, http://archive.wired.com/medtech/health/news/2007/05/india\_transplants\_donorpolicy (accessed 8/24/2014)

In fact, that concept is an illusion. In cases where the cause of death is ambiguous, the government routinely conducts autopsies where large pieces of the person's viscera are removed for scientific analysis -- often later to be used in a criminal investigation. In addition, as Spital and Taylor argue, the government reserves the right to draft young men against their will into war and risk their lives in combat operations.

#### Routine removal allows opt-out and family consultation in some cases, and upholds communitarianism

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, <http://www.nap.edu/openbook.php?record_id=11643>

Routine removal is broadly communitarian (Nelson, 1992), whereas presumed consent—like expressed consent—is largely individualistic, even though it may include a role for the family. Policies of routine removal also fall under the broad label of opting out, because they generally allow individuals to opt out under various circumstances. Furthermore, in most countries, organ procurement teams contact the families of decedents, even when the authorizing legislation for routine removal does not mandate consultation with the family (Prottas, 1985).

### Routine Removal Solves and is not Presumed Consent

#### Routine removal is superior because its solvency doesn’t depend on public opinion or attitudes

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, http://www.nap.edu/openbook.php?record\_id=11643

It is also important to note that broad public understanding and voluntariness are not essential for an effective policy of routine organ removal. Instead, state or societal ownership of or authority over the bodies of deceased individuals (or individuals’ and families’ enforceable social obligations) ground the law and social practices of implementation (Childress, 1997). Hence, the removal does not require anyone’s explicit or implicit consent. However, for various reasons, public understanding and voluntary (although passive) acceptance may still be sought.

#### Property rights don't apply--just as the government can regulate body disposal, it should regulate organ donation

Ted Rall, syndicated columnist, September 26, 2013

"Mandatory Organ Donation," Japan Times, http://www.japantimes.co.jp/opinion/2013/09/26/commentary/world-commentary/mandatory-organ-donation/ (accessed 8/24/2014)

Which brings us to the government’s role. I don’t understand why organ donation isn’t mandatory. Why isn’t every corpse harvested for all of its usable organs? It isn’t a property rights issue. You don’t own your corpse. Neither does your family. If it did, they could leave your body to rot in the backyard. Laws dictate how to properly dispose of a dead person.

#### Routine removal is already standard practice in some U.S. jurisdictions and courts have upheld the practice

James F. Childress, Bioethicist at University of Virginia, Charlottesville, et al, 2006

Organ Donation: Opportunities for Action, National Academies Press, http://www.nap.edu/openbook.php?record\_id=11643

Some states in the United States do authorize medical examiners to remove the corneas from bodies that come under their authority to conduct an autopsy to determine the cause of death. These laws do not require express consent. Even though they allow opting out, they generally do not impose an obligation on the medical examiner to notify families, even if the next of kin happens to be nearby. In one case in Florida, a family was in a nearby room while a deceased relative’s corneal tissue was being removed without their express consent (Florida v. Powell). In Florida v. Powell, the Florida Supreme Court found that state’s law to be constitutional. It found that the statute had a reasonable relation to the permissible legislative objective of “providing sight to many of Florida’s blind citizens” through the provision of a larger and superior supply of transplantable corneas from the medical examiner’s office than that available through regular donation.

### Xenotransplantation Solves

#### Pig organ transplants are already in the development stage

Robert E. Michler, Director of Heart Transplant Service, Columbia-Presbyterian Medical Center, New York, January-March 1996

"Xenotransplantation: Risks, Clinical Potential, and Future Prospects," U.S. National Library of Medicine, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2639801/pdf/8903201.pdf (accessed 8/22/2014)

More recently, Czaplicki and co-workers in 1992 described a case in which they attempted the xenotransplantation of a pig heart into a human recipient with Marfan’s syndrome. By their report, no evidence of hyperacute rejection was present at the time of death nearly 24 hours after

xenotransplantation. Their protocol used an unusual immunosuppressive regimen in which both donor and recipient received, in addition to conventional immunosuppression, both thymic tissue extracts and fetal calf sera. This regimen also included the extracorporeal perfusion of two pig hearts with the recipient’s blood in an attempt to remove human anti-pig antibodies before the orthotopic transplantation of the functional pig heart (33). As astonishing as this case may be in its extension to the clinical arena of a technique not yet shown to be effective in the experimental laboratory, it is not unique. Also in 1992, Makowka and colleagues transplanted a pig liver into a 26-year-old woman dying of acute liver failure from autoimmune hepatitis (pers. comm.).

Baboon transplants are empirically successful

Robert E. Michler, Director of Heart Transplant Service, Columbia-Presbyterian Medical Center, New York, January-March 1996

"Xenotransplantation: Risks, Clinical Potential, and Future Prospects," U.S. National Library of Medicine, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2639801/pdf/8903201.pdf (accessed 8/22/2014)

During the past 3 years, investigators at the University of Pittsburgh reported two cases in which they transplanted a baboon liver into a human recipient, obtaining a 70-day survival in their first reported case, and a 26-day survival in the second (29; J.J. Fung, pers. comm.) The investigators’ overwhelming effort to prevent rejection led them to use a harsh immunosuppressive regimen that permitted multiple life-threatening infections. Rejection was not the major clinical obstacle they encountered; therefore, they recommended a more directed and less arduous immunosuppressive regimen for future patients.

#### Xenotransplantation bypasses any questions of willingness of donors and technology is being developed through multiple channels

Nature, July 3, 2014

"Presumed Consent," Nature, http://www.nature.com/news/presumed-consent-1.13316 (accessed 8/22/2014)

One important motivation when it comes to organ donation is that there is little alternative. If someone with a failing organ today does not find a willing donor, they may not see tomorrow. That may not always be the case. As a News Feature on page 20 investigates, researchers are using tissue-engineering techniques to build artificial hearts in the laboratory. A Letter published online this week describes the use of induced pluripotent stem cells to grow human liver tissue in mice (T. Takebe et al. Nature http://dx.doi.org/10.1038/nature12271; 2013). And, last month, Japan announced plans to relax a ban on experiments that mix human and animal cells, which could be used to generate transplantable human organs in pigs.

### Xenotransplantation Solves

#### Xenotransplants can replace organs and cure diseases

Rebecca D. Williams, Medical Correspondent, June 1996

"Organ Transplants from Animals: Examining the Possibilities," FDA Consumer Magazine, http://web.archive.org/web/20071210031618/http://www.fda.gov/fdac/features/596\_xeno.html (accessed 8/22/2014)

Xenotransplants are on the cutting edge of medical science, and some scientists think they hold the key not only to replacing organs, but to curing other deadly diseases as well. Last December, for example, after getting permission from the Food and Drug Administration, researchers at the University of California, San Francisco, injected an AIDS patient with baboon bone marrow. The hope was that the baboon bone marrow, which is resistant to HIV and a source of immune cells, could provide a replacement for the patient's damaged immune system. In April 1995, also with FDA permission, doctors at Lahey Hitchcock Medical Center in Burlington, Mass., injected fetal pig brain cells into the brains of patients with advanced Parkinson's disease. The hope was that the fetal tissue would produce dopamine, which the patients' brains lack. Both experiments were primarily to test the safety of such procedures, not whether they are effective. Other xenotransplant experiments have involved implanting animal hearts, livers and kidneys into humans.

#### Pigs solve without risk of transpecies infection

M.D. Diikdeniya and A.N. Warrens, Department of Immunology, Imperial College, Hammersmith, March 2003

"Xenotransplantation: Where Are We Today?" Journal of the Royal Society of Medicine, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC539416/ (accessed 8/22/2014)

The present trend in research is towards use of the pig as donor. Transgenic pigs have been available for some years, and recent ‘knock out’ pigs have been generated by nuclear transfer techniques. This means that we are now capable of removing or adding proteins to and from potential donor animals—a luxury clearly unavailable in allotransplantation. Added to that, the pig is bred for slaughter and its use should not generate the objections that arise with non-human primates. We already have extensive knowledge of husbandry conditions, and studies have shown the possibility of producing pigs with little or no infectious diseases. Because of their phylogenetic distance from man, the likelihood of cross-species transmission of infections is less.

#### Pig organs solve and avoid moral objections

Rebecca D. Williams, Medical Correspondent, June 1996

"Organ Transplants from Animals: Examining the Possibilities," FDA Consumer Magazine, http://web.archive.org/web/20071210031618/http://www.fda.gov/fdac/features/596\_xeno.html (accessed 8/22/2014)

Pigs have anatomies strikingly similar to that of humans. Pigs are generally healthier than most primates and they're extremely easy to breed, producing a whole litter of piglets at a time. Moral objections to killing pigs are fewer since they're slaughtered for food. (Select the graphic at right to see an enlarged JPEG version [131k].) Pig organs have been transplanted to humans several times in the last few years. In 1992, two women received pig liver transplants as "bridges" to hold them over until human transplants were found. In one patient, the liver was kept outside the body in a plastic bag and hooked up to her main liver arteries. She survived long enough to receive a human liver. In the other patient, the pig liver was implanted alongside the old diseased liver, to spare the patient the rigors of removing it.

### Presumed Consent Kills Autonomy

#### Presumed consent violates autonomy by taking the default decision out of individual hands

John Fabre, fellow at British Transplantation Society, Institute of Child Health, 2007

"Organ Donation and Presumed Consent," The Lancet, http://download.thelancet.com/pdfs/journals/lancet/PIIS0140673698850617.pdf?id=jaafKBgR9WQx4eGzxplGu (accessed 8/22/2014)

With respect to morals and ethics, I find presumed consent unacceptable on the grounds both of autonomy and of informed consent. Kennedy states that “a contracting-out system has a moral benefit of relieving grieving relatives of the burden of deciding about donation at a time of great psychological stress”. How it is that the state’s relieving relatives of this burden has any moral value is hard to see. The reverse is rather the case: to have such decisions taken out of one’s hands is morally degrading.

#### Honoring explicit death wishes upholds autonomy

Veronica English and Ann Sommerville, Department of Medical Ethics, British Medical Association, February 24, 2003

"Presumed consent for transplantation: a dead issue after Alder Hey?" Journal of Medical Ethics, http://jme.bmj.com/content/29/3/147.full (accessed 8/22/2014)

For many deceased people, few clues remain about whether they had any specific wishes. Nevertheless, the fact that an effort is made to identify such wishes reflects a deepseated notion that living people have rights to project their views into a future time when they have ceased to exist, in order to determine what is done to their remains. It is almost as if some ghost of their former autonomy is thought to remain, fuelling moral objections to proposals for bodies to become the property of the state to dispose of as it sees fit. It also reminds us that even largely secular societies value the concept of detecting and honouring the wishes of the deceased person.

### Presumed Consent Kills Autonomy

#### Presumed consent destroys the foundations of autonomy

Tom Bailey, correspondent for Spiked, August 7, 2012

"Presumed consent: nationalising our organs," Spiked, http://www.spiked-online.com/newsite/article/12731#.U\_vNkMVdXpg (accessed 8/22/2014)

Presuming consent would essentially end the idea of organ donation. No longer will people decide that - due to compassion, personal duty to their fellow human beings, or generosity - they will leave a part of their body to help someone else after they die. Rather, people will become organ conscripts, with the opt-out option working in a similar way to conscientious objection. Just as wartime conscription does away with people’s right to decide whether to serve in battle on the basis of duty or to help others, organ conscription does something similar. As Professor John Fabre from King’s College London, a former president of the British Transplantation Society, put it in 2008, when this idea was last floated: ‘Presumed consent would degrade the ethical framework of our society and change a system of organ donation based on generosity and compassion into one of the state taking back what it thinks is its, while intruding on one of the most personal and delicate moments of a family’s life.’ While it is arguably true that we all should have a sense of duty to help out our fellow human beings, including by allowing for our organs to be used to save lives after ours is over, this a purely moral argument. To assume that people do give consent takes away the ethical decision-making process. While the organs of dead people may be highly useful, to presume consent - or rather, to get no consent - treats people as nothing more than pieces of meat. Humans should be seen as ends-in-themselves, as autonomous beings with no inherent obligation to anyone else. The proposal for presumed consent assumes we have an obligation, just throwing in a conscientious-objector clause to suit the religious types who might kick up a bit of fuss.

### Presumed Consent Doesn’t Solve

#### Families can circumvent decisions

John Fabre, past president of the British Transplantation Society, October 30, 2010

"Presumed Consent is Unnecessary," British Journal of Medicine, http://www.ont.es/publicaciones/Documents/Articulos/2010/BMJ%20Analysis%20on%20presumed%20consent.pdf (accessed 8/22/2014)

The appeal of presumed consent legislation is based on the belief that if consent is a problem, presuming it will solve the problem. The misconception underlying this belief is that presumed consent equates with organ donation. In fact, presumed consent equates simply with the presumed consent of the potential donor—the actual decision to donate rests with the potential donor’s family. The family bases its decision on many factors, such as trust in the medical profession, understanding of the organ donation process, the professionalism of the approach for donation, and, most importantly, the expressed wishes of the potential donor (for example, through donor register, donor card, or conversations).

#### Having to register is the true impediment

Judd B. Kessler, professor of Business and Public Policy, University of Pennsylvania, and Alvin E. Roth, Professor of Economics at Harvard University, August 2011

"Organ Allocation Policy and the Decision to Donate," National Bureau of Economic Research Working Paper 17324, http://www.nber.org/papers/w17324.pdf (accessed 8/22/2014)

Decreasing the costs of registering to be a donor is a particular challenge in part because the costs are hard to identify. Since the physical removal of the organs only occurs after death and since the monetary costs are not borne by the donor‘s estate, it is unlikely that the costs are physical or monetary. Additionally, the costs appear to be more substantial than transaction costs, since registering to be an organ donor in most states only requires checking a box at the time of receiving a driver‘s license (and the registration rates remain low while the benefits to others are substantial). These facts suggest that the costs of registering to be an organ donor are most likely psychological costs.

### Presumed Consent Doesn’t Solve

#### Presumed consent won’t solve the organ shortage

Alex Tabarrok, Professor of Economics at George Mason University, May 4, 2010

"Presumed Consent and Organ Donation," Marginal Revolution, http://marginalrevolution.com/marginalrevolution/2010/05/presumed-consent.html (accessed 8/22/2014)

I'm actually a bit more positive than Kieran, the best evidence is that presumed consent raises donation rates by perhaps 20-30%. Not bad, but not enough to eliminate the shortage. To do that, as Satel notes in her contribution to the roundtable it will take live donation.

#### Presumed consent violates ethics, hurts relations between government and communities, and doesn’t increase donations

Johns Hopkins Medicine News, November 29, 2011

"Presumed Consent Not Answer to Solving Organ Shortage in U.S., Researchers Say," Hopinsmedicine.org, http://www.hopkinsmedicine.org/news/media/releases/presumed\_consent\_not\_answer\_to\_solving\_organ\_shortage\_in\_us\_researchers\_say (accessed 8/22/2014)

Enforcing an opt-out policy raises tricky ethical questions and could challenge the relationship between the transplant community and the general public, which should be mutually supportive, Segev adds. Segev and his team conducted in-depth interviews with transplant experts in European nations with presumed consent legislation. They found that, despite the laws, the process of organ donation in those countries does not differ dramatically from the process in countries, such as the United States, that require explicit consent. They also found that the United States ranked third among the nations surveyed in rates of organ donation from the deceased, with 26.3 deceased donors per million population. Only Spain (34.1) and Portugal (26.7) did better. “It does not appear that by simply having presumed consent legislation on the books that donation rates will rise,” says Brian J. Boyarsky, the Hopkins researcher who conducted the interviews.

#### Evidence is conclusive that presumed consent fails to increase organ stocks

Donate Life California, 2014

"Presumed Consent," Donate Life California FAQs, http://donatelifecalifornia.org/education/faqs/presumed-consent/ (accessed 8/22/2014)

A review of the accompanying chart indicates the wide disparity within European Presumed Consent countries donation rates, from a high of Spain’s 33.5 to a low of Greece’s 5.7, with a simple average of 12.5 nDPM, which is insignificantly different from the Explicit Consent average of 12.1 nDPM. This finding reconfirms a British Medical Journal article that studied inter-country European donation data and found that Presumed Consent and Explicit Consent donation rate variances were not statistically definitive[v]. This insignificant difference in DPM suggests that social, cultural, and operational factors, rather than legal structures are at play. For example, of the European countries with more than 70% Roman Catholic populations nDPM averages 16.3 while the countries with populations that are less than 70% Roman Catholic donation rates were only 9.1 nDPM; with a mix of PC and EC in each group of countries. Thus, it is very likely that religion plays a far more dominant and successful role in increasing organ donation in Europe than Presumed Consent.

### Presumed Consent Sparks Backlash Against Donation

#### Presumed consent destroys public confidence in the donation system

Katherine Hobson, Health Writer for Wall Street Journal, May 21, 2010

"Could a ‘Presumed Consent’ Law Boost Organ Donation?" WSJ.com, http://blogs.wsj.com/health/2010/05/21/could-a-presumed-consent-law-boost-organ-donation/ (accessed 8/22/2014)

Critics, meantime, worry that the law would stir up old fears that doctors wouldn’t try as hard to save the life of someone who was presumed to be a potential donor. “Support for donation was built up by publicizing the now familiar idea that organ donation is a unique, even sacred, sort of gift. A naive presumed consent proposal would run straight into this established understanding of donation,” writes Duke sociologist Kieran Healy in the NYT.

#### Presumed consent causes public backlash, decreasing overall organ donation

Emilia Benton, staffwriter for Nephrology Times, December 2010

"Presumed Consent: More Deceased-Donor Kidney Transplants, but Fewer Living-Donor Transplants," Nephrology Times, http://journals.lww.com/nephrologytimes/Fulltext/2010/12000/Presumed\_Consent\_\_More\_Deceased\_Donor\_Kidney.6.aspx (accessed 8/22/2014)

“Another major concern as a transplant community is that if there is presumed consent, it could actually backfire and end up decreasing organ donation in the United States,” Dr. Harmon said.“The basis of consent is trust that the organs in the system are being retrieved only after the person has been declared dead, only after there is no hope for recovery of the patient, and that all attempts to save the potential donor's life have been exercised before raising the question of whether or not the person would make a good organ donor.”

#### Presumed consent generates a backlash against organ donation

Alberto Abadie, Professor at Harvard's Kennedy School of Government, and Sebastien Gay, Professor of Economics at University of Chicago, June 2014

"The Impact of Presumed Consent Legislation on Cadaveric Organ Donation: A Cross Country Study," National Bureau of Economic Research Working Paper 10604, http://www.nber.org/papers/w10604.pdf (accessed 8/22/2014)

Finally, many questions remain unanswered about how to implement a legislative change of this type. Although recent studies have reported successful transitions to a presumed consent default (see, for example, Michielsen, 1996), it seems likely that in some countries the imposition of a presumed consent law, without building first sufficient social support, could generate an adverse response towards organ procurement efforts.

### Presumed Consent Sparks Backlash Against Donation

#### Presumed consent is a slap in the face of individualism, guaranteeing public backlash

J. Michael Dennis, Vice President and director of Government and Academic Research for Knowledge Networks, et al, June 30, 1993

"An Evaluation Of The Ethics Of Presumed Consent And A Proposal Based On Required Response," U.S. Department of Health and Human Services, http://optn.transplant.hrsa.gov/resources/bioethics.asp?index=2 (accessed 8/22/2014)

More profoundly, the policy stands to contradict a profound respect a majority of Americans reserve for the value of individualism, as evidenced in the following pronouncement: Presumed consent is not quite the American way. It is relatively coercive, compared to the more classical freedom of choice that characterizes our way of life. Consent should be positive, not implied. In the Subcommittee's view, the anti-statist, individualistic perspective is sufficiently distributed in the general population to make problematic the acceptance of presumed consent.

#### Presumed consent will turn the public against donation

Medical News Today, December 1, 2011

"US Organ Shortage - Presumed Consent Not The Solution," medicalnewstoday.com, http://www.medicalnewstoday.com/articles/238530.php (accessed 8/22/2014)

Dr Dorry L. Segev, an associate professor of surgery at the Johns Hopkins University School of Medicine and leader of the study published online in the journal Transplantation comments: "Opt-out is not the magic bullet; it will not be the magic answer we have been looking for. With opt-out the perception becomes, 'We will take your organs unless you take the time to fill out a form.' That's a dangerous perception to have. We only want to use donated organs from people who intended to donate." He adds that enforcing a policy of presumed consent will raise complex ethical questions and could disturb the relationship between the transplant community and the general public, which should be one of mutual support.

### Presumed Consent Sparks Backlash Against Donation

#### Most Americans believe doctors will try less hard to save them in a presumed consent system

Judd B. Kessler, professor of Business and Public Policy, University of Pennsylvania, and Alvin E. Roth, Professor of Economics at Harvard University, August 2011

"Organ Allocation Policy and the Decision to Donate," National Bureau of Economic Research Working Paper 17324, http://www.nber.org/papers/w17324.pdf (accessed 8/22/2014)

A national survey of 5,100 adults conducted in January 2010 on behalf of Donate Life America found that 52% of survey respondents believe doctors will try less hard to save them and 61% of survey respondents believed they might have their organs removed when they might still come back to life. (We have not seen evidence consistent with these beliefs, but regardless of whether this is properly labeled as a ―psychological‖ cost, it is a cost that seems difficult or impossible to decrease. For example, attempts to dispel such beliefs about worse medical treatment of organ donors may only serve to strengthen it or introduce it into the minds of others). In addition, deciding to be an organ donor requires an individual to think about his own death, which may itself generate psychological costs. It remains unclear how these costs can be effectively lowered.

#### Even if over-eager harvesting is not a problem, the poor will act as if it is, sparking backlash

Veronica English and Ann Sommerville, Department of Medical Ethics, British Medical Association, February 24, 2003

"Presumed consent for transplantation: a dead issue after Alder Hey?" Journal of Medical Ethics, http://jme.bmj.com/content/29/3/147.full (accessed 8/22/2014)

Arguably, awareness of a shared societal responsibility for the sick and the positive life enhancing benefits for organ recipients should be a bigger part of that effort. On a more practical level, some people may fear that donation procedures might be implemented before they are really dead or that less effort will be made to keep them alive if their organs would be useful for younger patients. They may have a fear of their body being mutilated. Obviously, it is vital that research is done to ascertain what fears people really have, and that those are properly addressed as part of public education campaigns, regardless of which donation system operates.